Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1726

TERRELL DON HUTTO, Commissioner,
Arkansas Department of Correction,
Petitioner,

v.

ANDREW JACKSON ROSS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO CERTIORARI

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OPINIONS BELOW

The Opinion of the Eighth Circuit is reported at 531 F. 2d 924 and is reprinted in the Appendix. The Opinion of the District Court is reported at 394 F. Supp. 1219 (1975). The Opinion of the Arkansas Supreme Court is reported at 514 SW 2d 409 (Ark. 1974).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the record supports the determination of the Eighth Circuit that the respondent's confession was involuntary and inadmissible as a matter of law?

STATEMENT OF THE CASE

Respondent takes issue with parts of the petitioner's statement of the case and thus presents a statement of the case in an attempt to correct inaccuracies and omissions.

The respondent, Andrew Jackson Ross, was charged on March 14, 1972, in an 86-count information with converting, using, and embezzling public funds in Pope County, Arkansas.

In September, 1972, the respondent, his attorney Mr. Robert Hays Williams, and the prosecuting attorney for the Fifth Judicial District, Mr. Alex G. Streett, struck a plea bargain whereby respondent would enter a plea of guilty to all charges and Mr. Streett would recommend to the Court a sentence of fifteen years, with ten years suspended. Subsequently, Mr. Streett approached Mr. Williams and asked if he could obtain a statement concerning the crime from the respondent. The stated reason for obtaining the statement was to complete Mr. Streett's file.

On October 6, 1972, at the office of Mr. Williams, the respondent gave a detailed statement in response to questions from Mr. Streett covering 34 pages. (S.T. 537-571) The respondent

attended this arduous session, leaving hospital confinement against the advice of his doctor, and on two occasions asked that he be allowed to return to the hospital. (S.T. 558-559)

On October 9, 1972, the respondent appeared before the Honorable W. H. Enfield in the Circuit Court of Pope County, Arkansas, for the purpose of entering a negotiated plea. The proceeding was interrupted, however, by the respondent's former secretary, Mrs. Rosilee Mertz. She stated to the Court that the respondent had been ill and under a doctor's care for approximately one year and did not know what he was doing by pleading guilty. (S.T. 42, 43) Judge Enfield, after a brief hearing, committed the respondent to the Arkansas State Hospital for examination and observation. Between October 9, 1972, and August 27, 1973, the respondent changed counsel. At the time of the trial, he was represented by Mr. Jeff Mobley and Mr. William Murphy. Prior to the August 27, 1973, trial, the issue of competence to stand trial was raised and the respondent was again institutionalized and examined. During the trial, which commenced on August 27, 1973, the respondent's full statement was read into the record over the objection of respondent's counsel.

The respondent was convicted and sentenced to a 21-year term of imprisonment. The Arkansas Supreme Court affirmed the judgment in *Ross v. State*, 257 Ark. 44, 514 S.W. 2d 409 (1974).

The respondent filed a petition for Writ of Habeas Corpus in the United States District Court for the Western District of Arkansas, Ft. Smith Division, on May 5, 1975. After hearing, the court issued its opinion and order denying the writ on May 23, 1975. The Eighth Circuit reversed that decision on March 16, 1976.

ARGUMENT

The Court of Appeals in finding that the confession of the respondent was given as a result of a plea bargain and was therefore involuntary under all the circumstances was reached under existing precedent. *Swenson v. Stidham*, 409 U.S. 224 (1972); *Malloy v. Hogan*, 378 U.S. 1 (1963); *Hunter v. Swenson*, 442 F. 2d 625 (8th Cir. 1971). The Eighth Circuit did not depart from existing precedent. As the Court of Appeals found, there is little dispute as to the basic facts in this case, although the petitioner attempts to again argue the facts in his statement of the case and argument.

The Court of Appeals' decision does not conflict with applicable decisions of this Court or with decisions of any other circuit. The Court of Appeals was convinced that the factual determination by the state court was clearly erroneous in that the confession was given as a result of the plea bargain. The court was therefore left with no choice but to find that the confession was involuntary and inadmissible.

CONCLUSION

For the above reasons, a writ of certiorari should be denied.

Respectfully submitted

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Certification of Service

I, Henry L. Jones, Jr., hereby certify that three copies of the foregoing Brief in Opposition to Certiorari was served upon opposing counsel, Attorney General Jim Guy Tucker, State of Arkansas, Justice Building, Little Rock, Arkansas 72201.

Henry L. Jones, Jr.